

**STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT**

IN THE MATTER OF: WILLIAM E. CASEY

)
)
)
FILE NO. 0400692

CONSENT ORDER OF DISMISSAL

TO THE RESPONDENT William E. Casey
 (CRD#: 2244596)
 1886 Morgan Avenue
 St. Paul, Minnesota 55116

 c/o Sumner Harrington Ltd.
 11100 Wayzata Boulevard,
 Suite 170
 Minnetonka, Minnesota 55305

WHEREAS, Respondent on the 23rd day of May 2005 executed a certain Stipulation to Enter Consent Order of Dismissal (the "Stipulation"), which hereby is incorporated by reference herein.

WHEREAS, by means of the Stipulation, Respondent has admitted to the jurisdiction of the Secretary of State and service of the Notice of Hearing of the Secretary of State, Securities Department, dated April 7, 2005, in this proceeding (the "Notice") and Respondent has consented to the entry of this Consent Order of Dismissal "Consent Order").

WHEREAS, by means of the Stipulation, the Respondent acknowledged, without admitting or denying the truth thereof, which the following allegations contained in the Notice of Hearing shall be adopted as the Secretary of State's Findings of Fact:

- A. That at all relevant times, the Respondent was registered with the Secretary of State as a salesperson in the State of Illinois pursuant to Section 8 of the Act.
- B. That on September 8, 2004 NASD entered a Letter Of Acceptance, Waiver And Consent (AWC) submitted by the Respondent regarding File No. CAF0400069 which sanctioned him as follows:

Consent Order Of Dismissal

2

- a. suspension from association with any NASD member in all capacities for a period of twenty (20) days;
 - b. fined Five Thousand (\$5,000) Dollars; and
 - c. re-qualify by examination as a Series 24 Principal within three months after the acceptance of the AWC or cease serving in that capacity.
- C. Respondent was first registered with NASD in April 1990. He is currently Sumner Harrington's Manager of Investor Services. Prior to being named Manager of Investor Services, Casey was Sumner Harrington's Team Leader for Customer Service. Prior to joining Sumner Harrington, Casey was a registered representative with American Express, Strong Investments, IDS Life Insurance Company, Fortis Investments, American Enterprise Investment Services and First Investment Corp. Casey holds the Series 6, 7, 24, 53 and 63 licenses. He has no disciplinary history.
- D. That the AWC listed the following background information: Sumner Harrington, a Minnetonka, Minnesota broker-dealer, was first registered with NASD in 1999 as Minnesota Investment Services Corporation. In 2001, Minnesota Investment Services Corporation was acquired by Sumner Harrington, Incorporated, and subsequently changed its name to Sumner Harrington, Ltd. Sumner Harrington is a limited service broker dealer, and participates as a best efforts underwriter in offerings of renewable notes. The firm has also participated as a best efforts underwriter in a preferred stock offering. The firm has no disciplinary history.
- E. That the AWC found:
 - a. This matter involves violations of multiple NASD Conduct Rules by Sumner Harrington, Elverud, and the Respondent between October 15, 2001, and, in the case of one offering, the present. During the relevant time period, Sumner Harrington participated as an underwriter and selling agent in three securities offerings on behalf of three issuers: an offering of 8% preferred stock issued by Cenex Harvest States Cooperatives ("Cenex"); and two offerings of renewable unsecured subordinated notes issued by Onyx Acceptance Corporation ("Onyx") and Metris Companies ("Metris"). Cenex is a grain-based foods, energy and agricultural supply company. Onyx specializes in near prime loans for the purchase of automobiles. Metris provides credit cards to moderate income consumers. The

Metris and Onyx notes are high yield debt securities issued for terms ranging from three months to ten years. As stated in each offering's prospectus, during the relevant time period, no secondary market existed for the Metris or Onyx notes, and they are illiquid. Similarly, as stated in the prospectus, at the time of the Cenex offering, no secondary market existed for Cenex stock.

- b. Sumner Harrington was the primary vehicle through which the Issuers presented the Offerings to the public. Sumner Harrington, through Sumner Harrington Agency Incorporated ("Sumner Harrington Agency"), an affiliated advertising agency, designed and managed advertising campaigns that employed newspaper advertisements; radio spots, targeted email campaigns, and direct market mailings. In many instances, the advertisements called the public to take specific action in order to benefit from specific opportunities and promotions relating to the Offerings. With limited exceptions, the advertising campaigns coordinated by Sumner Harrington and Sumner Harrington Agency were the only means by which the public was made aware of the availability of the Offerings. In addition to designing and coordinating the advertising of the Offerings, Sumner Harrington also acted as the best-efforts underwriter of the Offerings, fielding inquiries from the public and processing subscription agreements submitted by potential customers. As part of its business activity, Sumner Harrington, through Elverud and the Respondent, made determinations as to whether securities offered through Sumner Harrington were suitable for potential customers.
- c. By designing, coordinating and distributing the advertisements for the Offerings, Sumner Harrington is deemed to have recommended the Offerings to investors. Recommending the Offerings required Sumner Harrington to make determinations about investor suitability. As set forth below, Sumner Harrington violated NASD Conduct Rule 2110 and 2310 by making unsuitable recommendations to certain customers in connection with the Offerings. Specifically, in more than 500 instances, Sumner Harrington, through Elverud and the Respondent, recommended securities based solely on written materials submitted by potential customers that did not contain sufficient information to form a reasonable basis for believing that the investment was suitable for those customers. In addition, in more than 80 instances, Sumner Harrington, through Elverud and the Respondent, recommended and approved

unsuitable investments in which customers were over-concentrated in Cenex, Onyx or Metris securities.

- d. Sumner Harrington and Elverud also failed to disclose to NASD's Corporate Financing Department compensation received by the firm through Sumner Harrington Agency, failed to describe its advertising compensation in offering materials distributed to the investing public, and, in the case of the Metris offering, received unfair and unreasonable compensation in connection with the offering. In doing so, Sumner Harrington and Elverud violated NASD Conduct Rules 2710, 2210 and 2110 by violating Section 17(b) of the Securities Act of 1933.
- e. Sumner Harrington also violated Conduct Rule 2210(d)(1)(A) and 2110 when in January 2003 it failed to provide sufficient risk disclosures in the Metris advertising materials regarding recent events at Metris.
- f. Finally, Sumner Harrington maintained an inadequate supervisory system that failed to prevent and detect the suitability violations described herein, failed to maintain adequate written supervisory procedures, and, through Elverud and the Respondent, failed to supervise suitability determinations in violation of NASD Conduct Rule 3010.
- g. Sumner Harrington is a limited service broker dealer located in Minnetonka, Minnesota, that engaged in participating, both as underwriter and selling agent in best-efforts offerings of preferred stock and renewable notes. Sumner Harrington is a wholly owned subsidiary of Sumner Harrington, Incorporated, a Minnesota corporation.
- h. Sumner Harrington Agency, Inc., is an advertising agency formed by Sumner Harrington, Incorporated solely for the purpose of coordinating and implementing marketing strategies in connection with the securities offerings underwritten by Sumner Harrington. Sumner Harrington Agency is neither a broker-dealer, nor an NASD member. Its only clients are the issuers who have offered securities to the public through Sumner Harrington.

- i. Elverud is, and at all relevant times was, the President of Sumner Harrington, Sumner Harrington, Incorporated and Sumner Harrington Agency. Through his ownership interest in Sumner Harrington, Incorporated, he is, and at all relevant times was, the majority owner of Sumner Harrington (the broker-dealer) and Sumner Harrington Agency.
- j. Sumner Harrington offers, and at all relevant times offered, its issuer clients a full range of services with regard to securities offerings. Sumner Harrington consults with issuers regarding the structure of a potential offering; plans a campaign to market the securities to the investing public; manages the advertising campaign through Sumner Harrington Agency; assists the issuer in preparing pre-offering documents; acts as the best-efforts underwriter and selling agent of the offering on a subscription-way basis; and, in the case of debt offerings, acts as a servicing agent for the offering on an ongoing basis.
- k. The Respondent is, and at all relevant times was, a principal of Sumner Harrington, and was responsible for overseeing the process of determining when subscription agreements submitted by potential customers would be accepted and processed by Sumner Harrington. In particular, the Respondent was responsible for determining whether subscription agreements submitted by potential customers were, on a case-by-case basis, suitable for those customers. As part of his duties, the Respondent supervised the representatives who handled incoming calls from the investing public, and a Series 24 principal who, in his absence, also made suitability determinations regarding subscription agreements that were submitted by potential customers.
- l. Cenex is an agricultural cooperative that provides services ranging from grain marketing and food processing to energy distribution. Sumner Harrington began selling a \$50 million offering of Cenex 8% preferred stock in November 2001. The Cenex stock offered through Sumner Harrington entitled shareholders to cash dividends at 8% per annum, if declared. However, the shares were illiquid and had no secondary market. The offering was suspended in September 2002. By that date, Sumner Harrington had sold approximately \$9 million of Cenex shares to over 700 customers.

- m. Onyx is a publicly traded consumer finance company that specializes in providing near prime automobile financing in automobile dealerships throughout the country. In February 2002, Onyx and Sumner Harrington entered into an agreement to offer \$50 million in renewable, unsecured subordinated notes. Under the prospectus, holders of the notes are entitled to varying interest payments, depending on the term of the note; however, the notes are illiquid and not traded on any secondary market. Moreover, the Onyx notes are subordinated to virtually all Onyx debt. At the time the offering commenced, Onyx had total assets of approximately \$403 million and approximately \$341 million of debt that was superior to the note holders' interest. The Onyx offering is ongoing.
- n. Metris is a publicly traded company that provides consumer credit products, primarily personal credit cards issued through its subsidiary, Direct Merchants Credit Card Bank. In October 2002, Metris and Sumner Harrington entered into an agreement to offer \$150 million in renewable, unsecured subordinated notes. Like the Onyx notes, holders of Metris notes are entitled to varying interest payments, depending on the term of the note. The notes are illiquid and not traded on any secondary market. The Metris notes are also subordinated to virtually all Metris debt. At the time the offering commenced, Metris had total assets of \$2.9 billion and approximately \$555 million in debt that was senior to the notes.
- o. Metris faced significant financial and regulatory challenges during the months prior to the offering. In April 2002, Metris' subsidiary, Direct Merchants Bank, entered into a settlement agreement with the Office of the Comptroller of the Currency ("OCC") that imposed remedial obligations on the bank and gave the OCC broad power to insist on internal management changes. In September 2002, a class action lawsuit was filed in Minnesota on behalf of Metris shareholders alleging, among other things, that Metris and its officers made false statements in connection with the OCC's examination of Direct Merchants Bank and the effect of the examination on the company's financial condition. In December 2002, Metris announced the termination of its Chairman and CEO. On or about December 26, Standard & Poor's and other ratings agencies downgraded Metris' senior and subordinate debt. Thereafter, in January 2003, Metris announced a fourth

quarter loss of \$48.5 million. Metris suspended its renewable notes offering in February 2003. By that time, Sumner Harrington had sold approximately \$1.9 million of Metris notes to over 160 customers.

Sumner Harrington's Sales Method

- p. Sumner Harrington was involved in each stage of the Offerings, from inception to post-subscription investor relations. At the beginning of an Offering, Sumner Harrington consulted with the Issuer, and coordinated, through Sumner Harrington Agency, an advertising campaign designed to present the Offering to the investing public. The advertising campaigns employed newspaper advertisements, radio spots, targeted email campaigns, and direct market mailings. With limited exceptions, the advertising campaigns coordinated by Sumner Harrington and Sumner Harrington Agency were the only means by which the public was made aware of the availability of the Offerings.
- q. Many of the advertisements encouraged the public to "Act Now!" in order to take advantage of limited-time interest rate offers made by the issuers. Moreover, certain of the advertisements were targeted to specific audiences, including individuals who had previously purchased securities through Sumner Harrington, and individuals who had purchased securities from the Issuers in other offerings not underwritten by Sumner Harrington.
- r. Sumner Harrington's advertisements invited the public to contact Sumner Harrington through a toll-free number to obtain an "Investment Kit," which contained a prospectus, a copy of the Issuer's most recent SEC 10-K filing, a subscription agreement, and an "Investor Profile Form." If, after reviewing the materials enclosed in the Investment Kit, a potential customer wished to purchase a security offered through Sumner Harrington, the potential customer was invited to complete the Subscription Agreement and Investor Profile Form and return to Sumner Harrington by mail with a check made payable to the issuer in the amount of the proposed purchase.
- s. Upon receiving a subscription agreement, Investor Profile Form, and payment, an employee of Sumner Harrington reviewed the materials for completeness and forwarded the

documents to a supervisor for approval. If the investment was "approved," Sumner Harrington forwarded the payment directly to the issuer, and thereafter acted as the servicing agent for that customer's investment. The Respondent and Elverud were responsible for approving the majority of the subscription agreements that were accepted by Sumner Harrington.

- t. Many investments were approved and processed by Sumner Harrington without any communication with potential customers, apart from the information submitted by the potential customers on the subscription agreement and Investor Profile Form.
- u. Sumner Harrington's Investor Profile Form was a one-page document that collected information about a potential customer, including the customer's name, address, occupation, and employer. Section 5 of the Investor Profile Form asked potential customers to identify the customer's Annual Income, Net Worth, Liquid Assets, Federal Tax Bracket, and number of years' experience investing in "Bank CD's," "Tax-Exempt Bonds," "Corporate Bonds," and "Corporate Stocks."
- v. The Investor Profile Form did not by itself gather sufficient information concerning potential customers' financial and personal circumstances that would provide an adequate basis for determining whether a security offered through Sumner Harrington was suitable for that customer. Significantly, the Investor Profile Form did not request information about a customer's investment objectives. The Form also did not require information concerning other topics relevant to a determination of suitability. For example, the Investor Profile Form did not seek information that described the nature of the potential investor's experience in various investment vehicles, whether the applicant's income was recurring, or whether any family or health circumstances impacted the potential customer's financial circumstances. In addition, the Investor Profile Form did not define or explain the following terms: Annual Income, Federal Tax Bracket, Number of Years Investment Experience, Bank CDs, Tax-Exempt Bonds, Corporate Bonds, and Corporate Stocks. Unless they talked with a potential customer about the Investor Profile Form, Sumner Harrington, Elverud and the Respondent would not have known whether the potential

customer understood the language on the form, or the concepts upon which applicants' responses were based.

- w. In many instances, investments were approved by Sumner Harrington based on Investor Profile Forms that were incomplete.
- x. During the period October 15, 2001 to May 30, 2003, Sumner Harrington sold, on behalf of the Issuers, in excess of \$35 million in securities to more than 2,000 customers. More than 200 customers identified no securities experience in any of the investment vehicles described on the Investor Profile Form. More than 500 customers purchased an aggregate amount in excess of \$7.7 million in securities through Sumner Harrington without speaking to a Senior Harrington representative prior to the purchase or without providing any additional information other than that contained on the subscription agreement and Investor Profile Form.
- y. Sumner Harrington, through Elverud and the Respondent, violated NASD Conduct Rules 2310 and 2110 by making unsuitable recommendations to its customers in connection with the Offerings. Specifically, in certain instances Sumner Harrington recommended securities on behalf of the Issuers to the investing public without having reasonable grounds for believing that its recommendation was suitable for particular customers upon the basis of the facts disclosed to it prior to the transaction. In addition, Sumner Harrington, through Elverud and the Respondent violated Rule 2310 and 2110 when it failed to make reasonable efforts to obtain additional information concerning the customer's financial status, investment objectives, and other information relevant to making a determination as to suitability.
- z. In more than 500 instances, Sumner Harrington approved investments solely on the basis of information provided on the Investor Profile Form and subscription agreement, which failed to solicit sufficient information to form a reasonable judgment as to whether a particular security was suitable for a given customer. In the absence of meaningful communication with its clients with regard to investment objectives and other relevant information, approving investments based only on the information contained on the Investor Profile Form and subscription agreement violated Rules 2310 and 2110.

- aa. In violation of Rules 2310 and 2110, Sumner Harrington recommended and approved unsuitable investments in more than 80 instances in which customers were over-concentrated in Cenex, Onyx or Metris securities. These recommendations were unsuitable given the risk associated with placing a large portion of these customers' net worth in these unsecured and illiquid securities.
- bb. Elverud violated Rules 2310 and 2110 based on the conduct described above when, acting as the President of the firm, he designed the Investor Profile Form and established the policies and mechanisms under which the unsuitable sales were made. Furthermore, he also violated Rules 2310 and 2110 when he personally approved, as a Series 24 Principal of the firm, more than 100 subscription agreements that either 1) resulted in customers being over-concentrated in Cenex, Onyx or Metris securities, as described above, or 2) were approved based solely on the information provided on the Investor Profile Form or Subscription Agreement, as described above.
- cc. The Respondent violated Rule 2310 and 2110 when he personally approved, as a Series 24 Principal of the firm, more than 500 subscription agreements that either 1) resulted in customers being over-concentrated in Cenex, Onyx or Metris securities, as described above, or 2) were approved based solely on the information provided on the Investor Profile Form or Subscription Agreement, as described above.
- dd. Sumner Harrington received compensation in connection with the Offerings in three ways: First, Sumner Harrington received a commission of up to 3% on the purchase of the notes and preferred stock, depending, in the case of Metris and Onyx Notes, on the term of the investment. Second, Sumner Harrington received an annual management fee in the amount of .25% of the outstanding balance of each Issuer's portfolio of notes. Third, Sumner Harrington, through Sumner Harrington Agency, received compensation in the form of advertising revenue from the Issuers for services in connection with designing, managing and placing the advertising.
- ee. Sumner Harrington's advertising revenue represented the difference between the retail and wholesale cost of placing advertisements on behalf of the Issuers. Sumner Harrington

Agency invoiced the Issuers for the retail cost of advertising, paid the wholesale cost directly to the media provider, and retained the difference as compensation for its services. Revenue received by Sumner Harrington Agency was at times forwarded to Sumner Harrington (the broker dealer). In some instances, funds received by Sumner Harrington Agency were used to fund, among other things, the payrolls of the broker-dealer and its affiliates.

- ff. Sumner Harrington received \$109,360.54 in advertising revenue and \$99,232.17 in commissions in connection with the Cenex Offering; \$421,766.49 in advertising revenue and \$541,974.63 in commissions in connection with the Onyx Offering, and \$754,707.24 in advertising revenue and \$41,275.10 in commissions in connection with the Metris Offering.
- gg. Sumner Harrington Agency had yet to be organized when the Cenex and Onyx offerings commenced. Therefore, none of the materials submitted to NASD's Corporate Financing Department regarding these offerings disclosed the revenue that Sumner Harrington received or expected to receive in connection with its advertising services. Nevertheless, after the formation of Sumner Harrington Agency in May 2002, Sumner Harrington failed to provide any explanation or documentation to NASD's Corporate Financing Department describing changes in Sumner Harrington's underwriting compensation, in violation of NASD Conduct Rule 2710(b)(6)(A)(vi).
- hh. Sumner Harrington's advertising revenue was also not disclosed in the offering materials distributed to the investing public, in violation of NASD Conduct Rule 2710(c)(2)(C).
- ii. In addition, Sumner Harrington received unfair and unreasonable compensation in connection with the Metris offering, in violation of NASD Conduct Rule 2710(c)(1). The Metris offering was suspended in February 2003 after \$1,825,296 of the \$150 Million shelf offering had been sold. At the time the offering was suspended, Sumner Harrington had received \$41,275 in commissions for the sale of Metris notes, and \$754,707.10 in advertising revenue through Sumner Harrington Agency. In the aggregate, Sumner Harrington's total compensation in connection with the Metris offering exceeded 43% of the total offering proceeds. This percentage far exceeds the compensation deemed fair and reasonable by NASD.

- jj. The Investment Kits that Sumner Harrington sent to prospective customers included, among other things, text in a "Frequently Asked Questions" format, which described the terms of the Offerings, including a description of Metris Companies and the fact that Sumner Harrington was to receive commissions from Metris for its underwriting efforts. This text was in addition to the offering materials, and constituted sales literature as defined by NASD Conduct Rule 2210(a), because it was a "written communication(s) distributed or made generally available to customers or the public."
- kk. The text in the "Frequently Asked Questions" section failed to describe the advertising revenue Sumner Harrington Agency was entitled to receive as part of the Offerings. The omission of information concerning Sumner Harrington's advertising revenue was material, and made Sumner Harrington's statements, concerning its compensation misleading, in violation of NASD Conduct Rules 2210(d)(1)(A) and 2110.
- ll. After Metris's senior debt Standard & Poor's downgraded rating and other credit agencies in December 2002, Sumner Harrington continued to place newspaper advertisements in major newspapers during the month of January 2003. Sumner Harrington also continued to distribute Investment Kits to prospective customers that contained sales literature, as described above. Neither the newspaper advertisements nor the Frequently Asked Questions portion of the Investment Kits warned the investing public that credit agencies had downgraded Metris's credit rating, or that the Metris notes carried more risk as a result of the downgrades and events occurring at Metris, in violation of NASD Conduct Rules 2210(d)(1)(A) and 2110.
- mm. In connection with the Offerings, Sumner Harrington circulated to the investing public various notices, circulars, and advertisements designed to describe the Issuers' securities.
- nn. Although Sumner Harrington received consideration from the Issuers for its services in describing the Issuers' securities, Sumner Harrington at no time adequately disclosed such consideration or the amount thereof in its notices, circulars, and advertisements, in violation of NASD Conduct Rule 2110, by virtue of a violation of Section 17(b) of the Securities Act of 1933.

- oo. NASD Conduct Rule 3010 requires members to establish and maintain a system to supervise the activities of each registered person in a manner that is reasonably designed to achieve compliance with NASD rules and federal securities laws, and written supervisory procedures designed to achieve the same end.
 - pp. Until December 2002, Sumner Harrington's written supervisory procedures failed to adequately address suitability determinations for purposes of compliance with NASD Rule 2310. The firm adopted additional written supervisory procedures in December 2002, but these too failed to adequately describe the criteria that should be employed in order to achieve compliance with *NASD* Conduct Rule 2310. In addition, Sumner Harrington, through Elverud, failed to establish and maintain adequate procedures for the supervision of suitability determinations. Finally, Sumner Harrington, through Elverud, failed to adequately supervise and monitor the suitability determinations made by the Respondent; the Respondent, in turn, failed to adequately supervise and monitor the suitability determinations made by the Sumner Harrington employee under his charge. By engaging in the conduct described above, Respondent violated NASD Conduct Rule 2310, 2110, and 3010(a), and 3010(b).
- F. That Section 8.E (1)(j) of the Act provides, inter alia, that the registration of a salesperson may be revoked if the Secretary of State finds that such salesperson has been suspended by any self-regulatory organization registered under the Federal 1934 Act or the Federal 1974 Act arising from any fraudulent or deceptive act or a practice in violation of any rule, regulation or standard duly promulgated by the self-regulatory organization.
- G. That NASD is a self-regulatory organization as specified in Section 8.E (1)(j) of the Act.

WHEREAS, by means of the Stipulation Respondent has acknowledged, without admitting or denying the averments, that the following shall be adopted as the Secretary of State's Conclusion of Law:

That by virtue of the foregoing, the Respondent's registration as a salesperson in the State of Illinois is subject to revocation pursuant to Section 8.E (1)(j) of the Act.

Consent Order Of Dismissal

14

WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that:

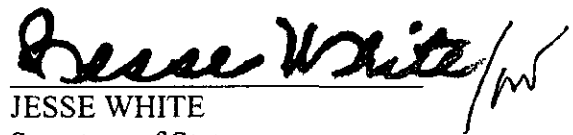
1. He will not act as a Designated Illinois Principal for a period of five (5) years from the entry of this Consent Order.
2. He has submitted with the Stipulation a certified or cashier's check in the Amount of One Thousand Five Hundred Dollars (\$1,500.00). Said check has been made payable to the Office of the Secretary of State, Investors Education Fund and represents reimbursement to cover the costs incurred during the investigation of this matter.

WHEREAS, the Secretary of State, by and through his duly authorized representative, has determined that the matter related to the aforesaid formal hearing may be dismissed without further proceedings.

NOW THEREFORE IT SHALL BE AND IS HEREBY ORDERED THAT:

1. William E. Casey will not act as a Designated Illinois Principal for a period of five (5) years from the entry of this Consent Order.
2. He has submitted with the Stipulation a certified or cashier's check in the Amount of One Thousand Five Hundred Dollars (\$1,500.00). Said check has been made payable to the Office of the Secretary of State, Investors Education Fund and represents reimbursement to cover the costs incurred during the investigation of this matter.
3. The notice of Hearing dated April 7, 2005 is dismissed.
4. The formal hearing scheduled on this matter is hereby dismissed without further proceedings.

ENTERED This 25th day of May 2005.


JESSE WHITE
Secretary of State
State of Illinois